

GERMAN YEARBOOK
OF INTERNATIONAL
LAW

VOLUME 34 · 1991



DUNCKER & HUMBLLOT · BERLIN

GERMAN YEARBOOK OF INTERNATIONAL LAW

Volume 34 · 1991

*The Editors and the Institut für Internationales Recht
do not make themselves in any way responsible
for the views expressed by contributors*

This Yearbook may be cited:
GYIL 34 (1991)

Communications should be addressed to:

The Editors
German Yearbook of International Law
Institut für Internationales Recht
an der Universität Kiel
Olshausenstrasse 40
D-2300 Kiel 1

GERMAN YEARBOOK
OF INTERNATIONAL LAW

JAHRBUCH FÜR INTERNATIONALES RECHT

Volume 34 · 1991



DUNCKER & HUMBLOT / BERLIN

Founders:

Rudolf Laun · Hermann von Mangoldt

Editors:

Jost Delbrück and Rüdiger Wolfrum

Assistant Editors:

Betsy Baker · Ute Jebautzke · Denise Smith-Bizzarro

Institut für Internationales Recht an der Universität Kiel

Advisory Board of the Institute:

Daniel Bardonnet

l'Université de Paris II

Rudolf Bernhardt

Max-Planck-Institut für
ausländisches öffentliches
Recht und Völkerrecht,
Heidelberg

Lucius Caflisch

Institut Universitaire de Hautes
Études Internationales, Genève

Antonius Eitel

Bonn

Luigi Ferrari Bravo

Università di Roma

Louis Henkin

Columbia University,
New York

Tommy T. B. Koh

Singapore

John Norton Moore

University of Virginia,
Charlottesville

Fred L. Morrison

University of Minnesota,
Minneapolis

Albrecht Randelzhofer

Freie Universität Berlin

Krzysztof Skubiszewski

Warsaw

Christian Tomuschat

Universität Bonn

Grigorij Tunkin

Moscow State University

Sir Arthur Watts

London

All rights reserved

© 1992 Duncker & Humblot GmbH, Berlin 41

Printed by Berliner Buchdruckerei Union GmbH, Berlin 61

ISBN 3-428-07382-7

Contents

Articles

<i>Ludwig Krämer: The Implementation of Environmental Laws by the European Economic Communities</i>	9
<i>Michael Bothe: The Protection of the Environment in Times of Armed Conflict</i> ..	54
<i>Jacek Machowski: Poland's Policies Toward Antarctica</i>	63
<i>Hugo Tiberg: Sweden's Baltic Boundaries</i>	92
<i>Victor-Yves Ghébal: La sécurité internationale à l'ère de l'après-guerre froide: Le rôle des Nations Unies</i>	108
<i>Hartmut Hillgenberg: Der KSZE-Mechanismus zur friedlichen Regelung von Streitfällen (with English summary)</i>	122
<i>Roy S. Lee: A Case for Facilitation in the Settlement of Disputes</i>	138
<i>Ernst-Ulrich Petersmann: Violation-Complaints and Non-Violation Complaints in Public International Trade Law</i>	175
<i>Sergei A. Voitovich: The Law-Implementing Functions of International Economic Organizations</i>	230
<i>Konstantin Günther: Zulässigkeit und Grenzen der Intervention bei Streitigkeiten vor dem IGH. Rechtsfragen zu Artikel 62 und 63 des IGH-Statuts (with English summary)</i>	254
<i>Henry G. Schermers: The Chairman of an International Organ</i>	296
<i>Christoph Schreuer: Secondment of United Nations Officials from National Civil Service</i>	307
<i>Georg Brunner: Minderheiten in der Sowjetunion (with English summary)</i>	354
<i>Edzard Schmidt-Jortzig: The Constitution of Namibia: An Example of a State Emerging under Close Supervision and World Scrutiny</i>	413

Note

- Angela Eggers*: Recent Developments in Human Rights. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 429

Reports

- Stefan Schuppert*: Die Rechtsprechung des Internationalen Gerichtshofes in den Jahren 1989 und 1990 (*with English summary*)..... 438
- Ursula E. Heinz/Arnim Findeklee*: Die Tätigkeit der International Law Commission in den Jahren 1987 bis 1990 460
- Dørte Pardo López*: Die Tätigkeit des Europarates in den Jahren 1989 und 1990 .. 486

Book Reviews

- Freestone/Jlstra* (eds.): The North Sea: Perspectives on Regional Environmental Cooperation: Special Issue of the International Journal of Estuarine and Coastal Law (*Fitzmaurice*) 557
- Gebring/Jachtenfuchs*: Haftung und Umwelt: Interessenkonflikte im internationalen Weltraum-, Atom- und Seerecht (*Harders*) 566
- Merten* (Hrsg.): Föderalismus und Europäische Gemeinschaften unter besonderer Berücksichtigung von Umwelt und Gesundheit, Kultur und Bildung (*Dicke*) .. 566
- Roelandt*: La condition juridique des Pipelines dans le Droit de la Mer (*Wiese*) ... 569
- Seeberg-Elverfeldt*: Die Streitbeilegung im Tiefseebergbaurecht (*Wolftrum*) 572
- Interamerican Commission on Human Rights/Interamerican Court of Human Rights* (eds.): Interamerican Yearbook on Human Rights/Anuario interamericano de derechos humanos 1987 (*Dicke*)..... 573
- Kimminich*: Religionsfreiheit als Menschenrecht. Untersuchung zum gegenwärtigen Stand des Völkerrechts (*Dicke*) 574
- Lerner*: Group Rights and Discrimination in International Law (*Wolftrum*) 575
- McGoldrick*: The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights (*de Zayas*) 576
- Nowak/Steurer/Tretter* (Hrsg.): Fortschritt im Bewußtsein der Grund- und Menschenrechte / Progress in the Spirit of Human Rights — Festschrift für *Felix Ermacora* (*de Zayas*) 580

<i>Weiler</i> : Internationale Ethik. Eine Einführung. Zweiter Band: Fragen der internationalen sittlichen Ordnung. Friede in Freiheit und Gerechtigkeit (<i>Dicke</i>)	584
Ausländerrecht (<i>Delbrück</i>)	586
<i>Hailbronner</i> : Ausländerrecht — Ein Handbuch	
<i>Frowein/Stein</i> (Hrsg.): Die Rechtsstellung von Ausländern nach staatlichem Recht und Völkerrecht — The Legal Position of Aliens in National and International Law — Le régime juridique des étrangers en droit national et international	
<i>Hofmann</i> : Die Ausreisefreiheit nach Völkerrecht und staatlichem Recht (<i>Hailbronner</i>)	589
<i>Lauterpacht/Greenwood/Weller/Bethlehem</i> (eds.): The Kuwait Crisis: Basic Documents (<i>Wolftrum</i>)	590
<i>Khan</i> : The Iran-United States Claims Tribunal: Controversies, Cases, and Contribution (<i>Seidl-Hohenveldern</i>)	591
<i>Ginsburgs/Kudriavtsev</i> (eds.): The Nuremberg Trial and International Law (<i>Partsch</i>)	594
<i>de Zayas/Rabus</i> : The Wehrmacht War Crimes Bureau, 1939-1945 (<i>Kimminich</i>) . . .	598
<i>Frowein/Stein</i> (eds.): Rechtliche Aspekte einer Beteiligung der Bundesrepublik Deutschland an Friedenstruppen der Vereinten Nationen (<i>Dicke</i>)	600
<i>Butler</i> (ed.): Perestroika and International Law (<i>Fitzmaurice</i>)	602
<i>Fisher</i> : Prior Consent to International Direct Satellite Broadcasting (<i>Hintz</i>)	610
<i>Kunig/Lau/Meng</i> (eds.): International Economic Law — Basic Documents (<i>Bizzarro</i>)	611
<i>Reid</i> : The Impact of Community Law on the Irish Constitution (<i>Philipp</i>)	612
<i>Folsom/Minan</i> (eds.): Law in the People's Republic of China: Commentary, Readings and Materials (<i>Fan</i>)	613

Briefer Notices

Netherlands Yearbook of International Law 1989 (<i>Schmitz</i>)	616
<i>Bertrand</i> : The Third Generation World Organization (<i>Juretzka</i>)	617
<i>Bull/Kingsbury/Roberts</i> (eds.): Hugo Grotius and International Relations (<i>Niewerth</i>)	617
<i>Butler</i> (ed.): The Non-Use of Force in International Law (<i>Schillhorn</i>)	618

<i>Dichtel</i> (Hrsg.): Schritte zum Europäischen Binnenmarkt (<i>Bartram</i>)	619
<i>Fiedler/Ress</i> (Hrsg.): Verfassungsrecht und Völkerrecht — Gedächtnisschrift für <i>Wilhelm Karl Geck</i> (<i>Wismeth</i>)	619
<i>Ramcharan/Francis</i> (eds.): Caribbean Perspectives on International Law and Organi- zations (<i>Rothert</i>)	619
<i>Riedel</i> : Der Einsatz deutscher Streitkräfte im Ausland — Verfassungs- und völker- rechtliche Schranken (<i>Kröger</i>)	620
<i>Ridruejo</i> : Curso de Derecho Internacional Público y Organizaciones Internacionales (<i>Bracker</i>)	620
<i>Virally</i> : Le Droit International en Devenir. Essais Ecrits au Fil des Ans (<i>Behrens</i>)	621
<i>Wandt</i> : Die Geschäftsführung ohne Auftrag im Internationalen Privatrecht (<i>Bracker</i>)	622
 <i>Books Received</i>	 624
 <i>List of Contributors</i>	 628

The Implementation of Environmental Laws by the European Economic Communities

By Ludwig Krämer

I. Introduction

Alexandre Kiss, probably the most renowned European environmental lawyer, concludes his book *Droit international de l'environnement* with the following statement on the implementation of European Economic Communities (EEC) environmental law:

It is encouraging to be able to end a book on international environmental law with a description of a legislative and judicial system which presents so many guarantees of efficiency. Certainly, one might object that Community law forms already no longer a part of international law, since the EEC has set up a quasi-federal system. This objection is not without value; however, is the future of international law not progressing towards federal forms? Environmental law which reveals so many strong and weak points of legal systems, gives, also in this regard, substance for reflection.¹

Along the same line of thinking, the International Environmental Law Conference (from 12 to 16 August 1990 in The Hague) which was organised by the International Union for Conservation of Nature and Natural Resources (IUCN) discussed, among other subjects, whether EEC implementation and enforcement procedures could form some sort of a model for the regional or global implementation and enforcement of international conventions.

The importance of EEC implementation rules is also underlined by a number of statements and resolutions which EEC institutions have adopted during the last few years. Thus, the Council Resolution adopting the Community's Fourth Action Programme on the Environment stressed that the Council attaches particular importance to the implementation of Community legislation, and called on the Commission to provide regular reports on the subject so that the Council and the European Parliament could assess the effectiveness of the Community's environmental policy.² The European Parliament in turn has adopted a series of Resolutions concerning the implementation of the Community rules on the

¹ *Alexandre Kiss*, *Droit international de l'environnement*, Paris 1989, 336.

² European Council, Resolution of 19 October 1987, Official Journal of the European Communities (OJEC) 1987, No C 328/1.

environment.³ In Dublin on 25-26 June 1990 the European Council stressed the importance of full implementation and enforcement of Community legislation and instructed the Commission to conduct regular reviews and publish detailed reports on its findings.⁴ Since environmental problems are of growing concern all over the world and in view of the upcoming United Nations environmental conference in 1992 in Brazil, it seems useful to describe in some detail EEC implementation rules for environmental standards and the way they function in practice.

II. The Framework Set by EEC Law

The EEC, a “Regional Economic Integration Organisation” that undertakes to integrate twelve sovereign nation-states into one European Community, has over approximately twenty years of environmental policy adopted some 200 binding pieces of law, in the form of EEC directives, regulations or decisions. These rules of law are adopted by the Council, which acts upon proposals from the Commission and with the participation of the European Parliament. Legal review is exercised by the Court of Justice.

“Community environmental legislation will only be effective if it is fully implemented and enforced by Member States”.⁵ At present, the overall situation within the EEC is characterised by the late transposal of directives into national law, rather frequent legal deficiencies in national legislative implementation and, in particular, deficiencies in the practical enforcement of rules on implementation of Community law which were fixed at the national level. EEC law is not present in national law; local, regional and national administrations are often not familiar with it. Its relationship with national rules — direct effect doctrine, superiority of Community law, significance of the texts of this or that Community rule — are ignored. In conflicts with economic developments, environmental aspects almost always are given second place. Thus it looks as if all combined rules of Community and national environmental law, adopted over twenty years, have not managed significantly or generally to reverse the trend of the slow but continued degradation of the environment within the EEC.

The key Articles as regards the implementation of EEC environmental measures are Articles 130 r (4) and 155 of the EEC Treaty. Article 130 r (4) states with regard to environmental measures:

³ Resolution of 10 March 1988 (air and water), OJEC 1988, No C 94/151 and 155; Resolution of 12 October 1988 (nature), OJEC 1988, No C 290/54; Resolution of 13 October 1988 (birds), OJEC 1988, No C 290/137; Resolution of 16 February 1990 (general), OJEC 1990, No C 68/183.

⁴ European Council, Bulletin of the European Communities 6/1990, 18-21.

⁵ European Council (note 4), 19.

Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the other measures.

Article 155 states:

In order to ensure the proper functioning and development of the common market, the Commission shall:

— ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied; . . .

It is generally accepted that Article 155 is not linked to “common market” requirements, but institutes the Commission as guardian of the Treaty in general.

Accordingly, the Commission’s work not only prepares environmental legislation or conceives and pursues an EEC environmental policy, but it also is obliged under the Treaty to ensure that all obligations imposed on Member States by Community environmental legislation are honoured.

Thus, Member States not only have to adopt the measures necessary to incorporate Community environmental legislation into their national laws, but also have to apply them fully and correctly over all their territory.

The Court of Justice has ruled that the preservation of the environment is an essential objective in the interest of the Community as a whole.⁶ The unique feature of environmental legislation, which distinguishes it from Community legislation in other areas, is that it depends almost exclusively on the goodwill of the national administrations to implement it. More specifically, Community legislation on economic affairs, agriculture, competition, transport, or services directly affects the vital interests of key sectors of economic activity in each Member State. Therefore, special interest groups are quick to mobilise all the legal, political or media resources at their disposal to enforce the Community legislation protecting them or combating practices detrimental to them. In contrast to that, the environment belongs to no one in particular (“the Community as a whole”) and therefore has no official defender. Virtually nobody can combine the know-how, means, resources and qualifications needed to protect a biotope, clean up a river or save a forest. Apart from sporadic action by environmental groups, most of whom are poorly equipped, it is left to the authorities to control activities which could potentially damage the environment, and to accept or reject infrastructure projects with a definite environmental impact or to keep track of the movement of dangerous substances or waste. In practice, they are responsible for enforcing the regulations implementing Community legislation and for bringing proceedings against polluters. Administrations alone can collect, organize and, where appropriate, publish data on emissions into the soil, air or water, environmental pollution, environmental hazards, the diversity of flora and fauna or the state of the environment in general.

⁶ Court of Justice, Case 240/83, ADBHU, (1985) European Court Reports (ECR) 531; Case 302/86, Commission v. Denmark, (1988) ECR 4607.